



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Hughes & Smith, Inc.

**File:** B-245969

**Date:** December 9, 1991

Jack Rephan, Esq., Sadur, Pelland & Rubinstein, for the protester.

Lynn J. Bush, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### **DIGEST**

Cancellation of invitation for bids (IFB) was proper where the Certificate of Procurement Integrity clause included in the solicitation did not contain a signature line or block, reasonably misleading the low bidder and five other bidders that a separate signature on the certificate was not required.

### **DECISION**

Hughes & Smith, Inc. protests the cancellation after bid opening of invitation for bids (IFB) No. N62477-88-B-2178, issued by the Department of the Navy for the provision of exterior insulation and windows at the Naval Research Laboratory in Washington, D.C. The protester contends that it should have received the award under the solicitation as the low responsive, responsible bidder.

We dismiss the protest.

The IFB, issued on August 7, 1991, contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8. The certificate that was included in the IFB did not contain a distinct signature line or signature block for bidders to complete. The certificate, however, did contain a parenthetical request for the signature of the offeror or employee responsible for the certification.

The Navy received 15 bids in response to the IFB by the September 9 bid opening date. Hughes & Smith, the apparent second low bidder at bid opening, and eight other bidders submitted signed certificates. Six bidders failed to sign

the certificate, including the apparent low bidder, R.J. Crowley, Inc. The apparent low bidder and most of the other bidders that did not sign their certificates did, however, complete the other portions of the certificate where lines were provided for those responses. The Navy allowed Crowley to sign its procurement integrity certificate after bid opening and made an award to the firm on September 24.

The Navy subsequently determined that the failure of the IFB's Certificate of Procurement Integrity clause to provide a signature line or block for a signature, despite that clause's parenthetical request for an authorized signature, was a latent ambiguity that misled bidders and required the cancellation of the IFB. The Navy based its cancellation and resolicitation determinations primarily upon our decision in Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. \_\_\_, 91-1 CPD ¶ 483, where we found that because the certification clause included in the solicitation did not contain a distinct signature line, a number of the bidders, including the protester, reasonably were misled regarding the solicitation's signature requirement. Although bid prices had been exposed, we recommended that the agency cancel the IFB and resolicit the requirement with a distinct signature line on the required procurement integrity certificate. On October 28, the Navy terminated Crowley's contract for the convenience of the government. The agency intends to resolicit the canceled requirement.

Hughes & Smith contends that the solicitation was not ambiguous and that the Navy did not have a compelling reason to cancel the IFB after bid opening since the apparent low bidder, Crowley, was not misled by the certificate's lack of a distinct signature line. The protester points out that Crowley's bid at bid opening contained a procurement integrity certificate that included a typed signature line, date, and the name of the bidder's certifier, which were apparently added to the IFB's certificate page by someone at Crowley's firm.

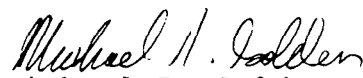
An agency should not cancel an IFB after bid opening absent a compelling reason. FAR § 14.404-1(a); Flintstone Crushing and Constr. Co., B-241803, Feb. 26, 1991, 91-1 CPD ¶ 216. An IFB may be canceled after bid opening when the agency determines in writing that a compelling reason to cancel exists due to, for example, inadequate or ambiguous specifications in the IFB. FAR § 14.404-1(c).

The record shows that a number of bidders were evidently misled by the certificate's omission of a signature line. Where, as here, a solicitation contains a defective Certificate of Procurement Integrity clause that failed to provide a distinct signature line (or adequate space and

direction to sign the certificate), which misled bidders into submitting nonresponsive bids, the appropriate remedy is cancellation and resolicitation. Bosco Contracting, Inc., B-244659.4, Aug. 27, 1991, 91-2 CPD ¶ 208; see Bade Roofing & Sheet Metal Co., B-243496, June 25, 1991, 91-1 CPD ¶ 606; Shifa Servs., Inc., supra.

Crowley, while not signing the certificate, otherwise completed the certificate by stating that it was unaware of any violations or possible violations of the OFPP Act, and the record shows that, apart from the failure to sign the certificate, the low bid was otherwise responsive. See Nomura Enter., Inc., B-245993; B-245521, Sept. 6, 1991, 91-2 CPD ¶ 216. Although Crowley's bid did contain a typed-in signature line, date and name of its certifier, it is unclear who at Crowley's firm performed this administrative task and it appears that the certifier may have reasonably assumed that since no line was provided by the government in the IFB's certificate, that a separate signature on the certificate was not required. Notwithstanding what Crowley believed, we do not think the bidder should be left to guess how to certify compliance with requirements concerning procurement integrity. We find it unreasonable to hold bidders responsible for creatively altering a solicitation provision to include a signature line, in order to be found responsive, Shifa Servs., Inc., supra, or for that matter, to reward one firm with an award for guessing correctly that a separate signature was required, where the clause is ambiguous in that regard. In our view, the omission of a signature line renders the solicitation defective.<sup>1</sup> Accordingly, we find that the agency had sufficient reason to cancel the solicitation.

The protest is dismissed.

  
Michael R. Golden  
Assistant General Counsel

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<sup>1</sup>This ambiguity has been recognized by the appropriate authorities and the FAR, at § 52.203-8, as amended by Federal Acquisition Circular 90-5, now clearly provides a signature line on the Certificate of Procurement Integrity. ✓